

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

PAUL T. GARDINER

Junior Party
(Patent 6,136,339),

v.

CARL W. HASTINGS,
DAVID J. BARNES, and
CHRISTINE A. DALEY,

Senior Party
(Application 10/781,141).

Patent Interference No. 105,824
(Technology Center 1600)

DECLARATION - Bd.R. 203(b)¹

Part A. Declaration of interference

An interference is declared (35 U.S.C. § 135(a)) between the above-identified parties. Details of the application(s), patent (if any), reissue application (if any), count(s)

¹ "Bd.R. x" may be used as shorthand for "37 C.F.R. ' 41.x". 69 Fed. Reg. 49960, 49961 (12 Aug. 2004).

and claims designated as corresponding or as not corresponding to the count(s) appear in Parts E and F of this DECLARATION.

Part B. Judge managing the interference

Administrative Patent Judge Sally Gardner Lane has been designated to manage the interference. Bd. R. 104(a).

Part C. Standing order

A Trial Section STANDING ORDER [SO] (Paper 2) accompanies this DECLARATION. The STANDING ORDER applies to this interference.

Part D. Initial conference call

A telephone conference call to discuss the interference is set for 2:00 p.m. on 3 November 2011 (the Board will initiate the call).

No later than four business days prior to the conference call, each party shall file and serve (SO ¶¶ 10.1 & 105) a list of the motions (Bd. R. 120; Bd. R. 204; SO ¶¶ 104.2.1, 120 & 204) the party intends to file.

A sample schedule for taking action during the motion phase appears as Form 2 in the STANDING ORDER. Counsel are encouraged to discuss the schedule prior to the conference call and to agree on dates for taking action. A typical motion period lasts approximately eight (8) months. Counsel should be prepared to justify any request for a shorter or longer period.

Part E. Identification and order of the parties

Junior Party

Named inventors: Paul T. Gardiner, Brampton, CANADA

Involved Patent: 6,136,339, issued 24 October 2000
from application 09/138,136, filed 21 August 1998

Title: FOOD SUPPLEMENTS AND METHODS
COMPRISING LIPOIC ACID AND CREATINE

Assignee: lovate T. & P. Inc.

Senior Party

Named Inventors: Carl W. Hastings, Glencoe, MO;
David J. Barnes, Wildwood, MO;
Christine A. Daley, Columbia, IL;

Involved Application: 10/781,141 filed 18 February 2004

Title: PERFORMANCE-ENHANCING DIETARY
SUPPLEMENT

Assignee: None of record

The senior party is assigned exhibit numbers 1001-1999. The junior party is assigned exhibit numbers 2001-2999. Bd. R. 154(c)(1); SO ¶ 154.2.1. The senior party is responsible for initiating settlement discussions. SO ¶ 126.1.

1 Part F. Count and claims of the parties

2 Count 1

3 Claim 1 of Gardiner (US 6,136,339) or claim 11 of Hastings (10/781,141).

4 The claims of the parties are:

5 Gardiner: 1-36

6 Hastings: 11-27

7 The claims of the parties which correspond to Count 1 are:

8 Gardiner: 1-3, 14, 24, 25, and 36

9 Hastings: 11-14 and 25-27

10 The claims of the parties which do not correspond to Count 1, and therefore are
11 not involved in the interference, are:

12 Gardiner: 4-13, 15-23 and 26-35

13 Hastings: 15-24

14 The parties are accorded the following benefit for Count 1:

15 Gardiner: None

16 Hastings: US 09/175,748, filed 20 October 1998

1 Part G. Heading to be used on papers

2 The following heading must be used on all papers filed in this interference, see

3 SO ¶ 106.1.1:

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15 (Patent 6,136,339),

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21 CHRISTINE A. DALEY,

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24 (Application 10/781,141).

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29 (Technology Center 1600)

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33 Part H. Order form for requesting file copies

34 When requesting copies of files, use of SO Form 4 will greatly expedite
35 processing of the request. Please attach a copy of Parts E and F of this
36 DECLARATION with a hand-drawn circle around the patents and applications for which
37 a copy of a file wrapper is requested.

/Sally Gardner Lane/
Administrative Patent Judge

Enc:

Copy of STANDING ORDER
Form PTO-850
Copy of claims of 10/781,141

Revised 3 January 2006

cc (via overnight delivery):

Attorney for Gardiner:

DINSMORE & SHOHL
1900 CHEMED CENTER
255 EAST FIFTH ST
CINCINNATI OH 45202

Attorney for Hastings:

MARSHALL, GERSTEIN & BORUN LLP
233 SOUTH WACKER DRIVE
6300 WILLIS TOWER
CHICAGO IL 60606-6357